



INFLUENCING CHINA'S WTO COMPLIANCE AND
COMMERCIAL LEGAL REFORM: BEYOND MONITORING

GEORGETOWN UNIVERSITY
LAW LIBRARY

ROUNDTABLE

BEFORE THE

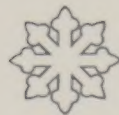
CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

APRIL 2, 2004

Printed for the use of the Congressional-Executive Commission on China



Available via the World Wide Web: <http://www.cecc.gov>

U.S. GOVERNMENT PRINTING OFFICE

93-683 PDF

WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

LEGISLATIVE BRANCH COMMISSIONERS

House

JIM LEACH, Iowa, *Chairman*
DOUG BEREUTER, Nebraska
DAVID DREIER, California
FRANK WOLF, Virginia
JOE PITTS, Pennsylvania
SANDER LEVIN, Michigan
MARCY KAPTUR, Ohio
SHERROD BROWN, Ohio
DAVID WU, Oregon

Senate

CHUCK HAGEL, Nebraska, *Co-Chairman*
CRAIG THOMAS, Wyoming
SAM BROWNBACK, Kansas
PAT ROBERTS, Kansas
GORDON SMITH, Oregon
MAX BAUCUS, Montana
CARL LEVIN, Michigan
DIANNE FEINSTEIN, California
BYRON DORGAN, North Dakota

EXECUTIVE BRANCH COMMISSIONERS

PAULA DOBRIANSKY, Department of State
GRANT ALDONAS, Department of Commerce
LORNE CRANER, Department of State
JAMES KELLY, Department of State
STEPHEN J. LAW, Department of Labor

JOHN FOARDE, *Staff Director*
DAVID DORMAN, *Deputy Staff Director*

CONTENTS

Page

STATEMENTS

Levine, Henry A., Deputy Assistant Secretary for Asia Pacific Policy, Market Access and Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC	2
Griffin, Leslie, Director, Asian Affairs, International Affairs Division, U.S. Chamber of Commerce, Washington, DC	5
Wells, Linda, Chief Counsel for Commercial Law Development, Director, Commercial Law Development Program, Office of General Counsel, U.S. Department of Commerce, Washington, DC	9

APPENDIX

PREPARED STATEMENTS

Griffin, Leslie	28
Wells, Linda	31

INFLUENCING CHINA'S WTO COMPLIANCE AND COMMERCIAL LEGAL REFORM: BEYOND MONITORING

FRIDAY, APRIL 2, 2004

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 10:30 a.m., in room 2255, Rayburn House Office building, John Foarde (staff director) presiding.

Also present: David Dorman, deputy staff director; Susan Roosevelt Weld, general counsel; Selene Ko, chief counsel for trade and commercial law; Carl Minzner, senior counsel; and Keith Hand, senior counsel.

Mr. FOARDE. Good morning, everyone. My name is John Foarde. I am the staff director of the Congressional-Executive Commission on China [CECC]. Welcome to this issues roundtable on influencing China's WTO compliance and commercial legal reform.

Since China's accession to the WTO in 2001, the Commerce Department has been conducting a small number of one-day technical assistance seminars in China, covering such topics as IPR enforcement, franchising, and legislative drafting. While effective within the limited scope that the Department intended, the Commerce Department organized these seminars on an ad hoc basis and Commerce Department offices with relatively little experience in providing technical assistance have been conducting these sessions. These seminars have been funded by unobligated funds that had originally been allocated for other purposes in the Commerce Department budget.

To date, the Administration has not dedicated specific funds to providing technical assistance to increase China's capacity to fulfill its WTO commitments. The fiscal 2004 budget increases funds for several Federal agencies to dedicate to China's WTO compliance efforts, but these monies are directed toward enhanced monitoring and enforcement and not toward technical assistance. Congress has dedicated no funds specifically to technical assistance to increase China's capacity to meet its WTO commitments.

The Commission's Annual Report in 2002 recommended that the Administration develop a comprehensive plan for WTO-related technical assistance to China, and the same report also recommended that Congress appropriate funds for the Commercial Law Development Program [CLDP] to implement a commercial rule of law training program in China.

Given this background, we wanted to spend some time today with Commerce Department representatives and with a representative from the business community to talk about commercial law technical assistance to China and how we might move forward on a program similar to those sponsored by China's other trading partners and that might be helpful to, and benefit, U.S. business and trade interests.

We have three distinguished panelists this morning. All three are good friends, and we welcome them all. I will introduce them in more detail in a minute, but we have Hank Levine, Linda Wells, and Leslie Griffin.

Our procedure on these roundtables, as we have done for the last two years, is that we give each of you 10 minutes to make an opening presentation. After eight minutes have elapsed I will tell you that you have two minutes remaining. Then when everyone has spoken, we will open it up to questions and answers from the staff panel. We hope to be joined by some personal staff of Commission members. It is conceivable, since they are in session, that we might even be joined by one of our Commission members, in which case the member would preside and take over the chairing of this roundtable.

So we will begin with Hank Levine. Henry Levine is Deputy Assistant Secretary of Commerce for Asia Pacific Policy, Office of Market Access and Compliance in the International Trade Administration at Commerce. Hank's responsibilities include market access concerns and compliance with international trade agreements. He is a member of the Senior Foreign Service and on detail from the State Department to Commerce. He has served the U.S. Government as an East Asia policy expert in a number of capacities, including as U.S. Consul General in Shanghai, a Deputy Director for Economic Affairs at the State Department's Office of Chinese and Mongolian Affairs, and as Director for Asia-Pacific Economic Cooperation [APEC] Affairs in the Office of the U.S. Trade Representative.

Welcome, Hank. Welcome back from China. Over to you for 10 minutes.

STATEMENT OF HENRY A. LEVINE, DEPUTY ASSISTANT SECRETARY FOR ASIA PACIFIC POLICY, MARKET ACCESS AND COMPLIANCE, INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, DC

Mr. LEVINE. Thank you very much, John.

First of all, thanks to the Commission for the invitation and the opportunity to be here and explain a bit about what we are doing. As I think you know, of course, we at the staff level also enjoy our work with the Commission and appreciate what you all are doing. Again, I am just happy to be here.

I thought what I would do is say a few words, first, about the background and the rationale for what we are doing in the technical assistance area, and then a little bit about some of the things that we are doing. As you mentioned, I come from the market access and compliance part of Commerce. Some might even question why it is that we, on market access and compliance, are so actively involved in the technical assistance area. Obviously, we spend a lot

of our time working with individual companies that have individual market access problems in China, a variety of different things. In addition to that, of course, we work closely with the other agencies, USTR in particular, as well as State, and so forth, in pressing China to live up to its WTO commitments.

That work spans the realm from quiet persuasion; to jumping up and down and expressing intense unhappiness; to formal negotiations, in some cases; to ultimately, as we saw a few weeks ago, actually filing a case in the WTO dispute resolution process.

So we are involved directly in market access and compliance with individual companies, and more broadly in pressing China on its commitments. However, we recognize that, while we are pressing China to do the right thing, it is also true that China needs a lot of assistance in developing the laws, the regulations, the trained personnel, and so forth that are necessary for it to implement its WTO commitments. For this reason, we see our technical assistance or capacity building efforts as a very important part of our overall efforts to ensure market access for U.S. companies in China.

I would note, by the way, that in addition to the normal efforts that China has to make to implement its WTO commitments—after all, any country that joins the WTO has to go through a process of rewriting laws and regulations—on top of that, I would emphasize, there is another whole layer of activity going on in China. The fact is that China is undergoing a massive transformation, moving from a planned economy in the direction of a market economy, and virtually every aspect of China's laws and economic structure is undergoing changes, whether it is the health care system, whether it is government procurement, whether it is the retirement system, technical standards, education, the news media, and so forth.

The Chinese, I will say, are very hungry for ideas about how other countries are pursuing these issues. And while we as Americans realize that we are not perfect in everything we do, the fact of the matter is that we have the strongest major economy in the world and we have a pretty darned good system in many other respects. Therefore, we have a lot to offer the Chinese as they are pursuing their transformation.

In fact, since our system is based on principles such as transparency, the rule of law, and having an objective and fair judicial process, in providing our views and perspectives to China, I think we are broadly promoting a number of U.S. interests while we are also making a contribution to China's own reform and development efforts.

Finally, I would just note in this regard that of course the EU, Japan, and other countries are very active in their technical assistance programs in China, and in many cases, of course, we share the same values and attitudes as the EU, Japan, and others. Therefore, their efforts are complementary or additive to ours. To be honest about it, however, in certain areas, in economic areas, for example, in areas such as technical standards or other approaches to the market competition policy in other areas, we may have a different perspective from the EU, Japan, or other countries. Therefore, it is particularly important that we make our perspective available to the Chinese as they are pursuing their reforms and

their restructuring. Otherwise, we could wind up in a situation where all of their reforms and restructuring are based on principles and concepts from other countries, to the detriment of U.S. companies and our economic involvement in the China market. So, it is important in that regard, too.

So there are some brief comments on the background, the philosophy that drives our efforts.

With regard to the activities of my part of the organization, these are led out of our China office, as John mentioned, using money otherwise appropriated to Commerce. To give you some sense of some of the activities that we are undertaking, we have two major events coming up in May. One, our U.S.-China Health Care Forum, undertaking with HHS. Again, I note that China is redoing its entire health care system, and, working with our companies, we want to provide our perspectives on how you develop a modern health care system, employing principles of transparency, protection of intellectual property rights, and so forth.

Also in May, we are working with U.S. private companies to host a major seminar on the Chinese logistics system, which really relates to our interest in distribution services and trading rights, a key part of China's WTO commitments. We are trying to help China understand how we in the United States have gone about creating such a vibrant, efficient logistics system, primarily by allowing market principles to drive the development rather than micromanaging by government agencies.

We are doing a lot in the area of standards. We have done a number of standard seminars in the past in China. We have another one that we are looking at for the late spring or summer. We are also working with a group of private U.S. standards organizations on opening a U.S. standards office in China, we hope with some support from the Commerce Department.

Briefly, many other topics. We are working with the National People's Congress on legislative drafting. We have done seminars on pharmaceutical regulatory issues and anti-counterfeit training. We have done medical device regulatory training, and government procurement seminars. IPR enforcement has been one of the major themes and we have worked directly with China's enforcement agencies, the Procuratorate, and others, on how to strengthen their enforcement of IPR.

To sum up, I think we have a broad set of programs that we are undertaking, keyed to the priorities of the U.S. private sector, using the resources that we have on hand. We consider it an important part of our market access and compliance activities.

I look forward to taking your questions and discussing this with you further. Thank you.

Mr. FOARDE. Thank you very much, Hank.

Let us go on. Let me recognize Leslie Griffin. Leslie is Director of Asian Affairs at the U.S. Chamber of Commerce here in Washington, and also Executive Director of the U.S.-Korea Business Council.

In her work as Director of Asian Affairs, Leslie develops and executes U.S. Chamber programs and policy relating to U.S. trade and investment in the Asia Pacific region. In carrying out the Chamber's Asia trade agenda, she works extensively with member com-

panies, state and local chambers of commerce, business coalitions, American chambers of commerce abroad, and U.S. and foreign governments. Her responsibilities include issues relating to U.S. business interests in greater China, Japan, and Korea. She serves as staff executive for the chamber's China WTO Implementation Working Group.

Before coming to the Chamber, she served as a legislative analyst on tax and trade issues for the American Petroleum Institute and worked as a budget analyst in the Congressional Budget Office. She has lived and taught in Nanjing, China, so she has a special relationship with China as well. We asked her to come this morning to give a business perspective on commercial rule of law development programs.

Over to you, Leslie, for 10 minutes. Thanks.

STATEMENT OF LESLIE C. GRIFFIN, DIRECTOR, ASIAN AFFAIRS, INTERNATIONAL AFFAIRS DIVISION, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Ms. GRIFFIN. Thank you, John. Thank you all for inviting me to participate today.

As John said, I was asked to talk about some of the business challenges that we are seeing in China, and then try to link those to how a commercial law development program could be of assistance.

The Chamber definitely thinks that a Commercial Law Development Program, CLDP, consistent with Section 511 of the U.S.-China Relations Act, would make a positive contribution to helping China develop its capacity to fully implement its WTO commitments and to create a more transparent business environment for our companies.

The Chamber strongly supported China's WTO accession, and we did so because we thought it would help support the country's broader reform efforts, as Hank mentioned, and, as I said, to create a sound business environment. The trade and investment commitments that China made are enormous in scope, and the steps needed to carry them out are equally enormous. Well over 1,000 Chinese trade laws, regulations, and rulings had to be reviewed for WTO consistency. Many new laws are now being drafted to cover sectors that were previously closed to foreign participation. Throughout the government, major departments are setting up WTO committees to review industry-specific laws and millions of officials, legislators, and judges are being trained. This challenge is particularly difficult in the interior of China, where there is less familiarity with the WTO's mandates.

We understood all along that the implementation of these commitments was going to be difficult. We did not see this as an easy ride. We think that in some areas their work has been impressive, but in other areas there is a lot of additional progress to be made. We do think that the Chinese Government has made a serious commitment to WTO compliance. But the same officials that make these commitments readily acknowledge that they do not have the depth of experience and the trained personnel on hand to carry these commitments out, especially in some of the major reform areas such as financial services and distribution rights.

I think that a CLDP program would give us a chance to work with Chinese officials outside the context of a very specific negotiation or decision in ways that would allow us to build cooperation for the future and present issues in their broad context.

So let us look at some of the compliance challenges we have seen. The Chamber has a Chinese WTO Implementation Working Group that is chaired by corporate leaders from various sectors. In the last couple of years, we have done reports on China's progress.

Rather than presenting a long list of sectoral issues, which I could do, I am just going to focus on four broad baskets of concerns that we have seen.

The first is transparency, which remains a key concern. The legal and regulatory environment is not transparent. We do not see a consistent enough use of advance consultations in the development of new regulations, and we think that this type of consultation would really advance the prospects for success in many sectors: autos, telecom, direct selling, and such. It also would benefit China. The professionalism and the experiences that foreign companies have had in other markets would be very beneficial as China tries to develop regulations that are economically sound and market oriented. We hope to see ministries developing a regular dialog with affected industries, as they have in some sectors, such as insurance. There has been a very good ongoing business-government dialog. Express services. There have been some good examples of dialog, and we want to see that continue.

The second broad area I would highlight would be, of course, intellectual property rights protection, where after two years of China's membership, it is clear that the enforcement system is far from effective. American companies lose billions of dollars each year to piracy and counterfeiting. Examples include counterfeit pharmaceuticals, especially those sold outside of hospitals, pirated movies, books, films, and software. The unauthorized use of business software is rampant.

Then we are starting to see counterfeiting in industrial sectors, like automobiles, where there is theft of industrial designs. We think that enforcement is not going to be effective until civil, administrative, and criminal penalties are routinely applied to infringers. And while we do see raids carried out at the central and provincial levels, the penalties are just not at a high enough level to really serve as a deterrent. We would like to see China continue with its efforts to train judges in IPR laws, to provide adequate resources to police, prosecutors, and administrative agencies, and, to make sure that these penalties are sufficiently high to serve as a deterrent.

The third broad area I would highlight would be standards. We obviously have a major issue confronting us right now with respect to the wireless local area networks and encryption standards that China is trying to mandate. China's adoption of mandatory standards that are out of step with international standards efforts and that do not consistently respect intellectual property rights are a major concern to the United States IT industry. We would like to see the Chinese Government participate more actively in international standard-setting bodies and to align its own standard

development efforts with internationally recognized standards and practices.

Finally, I would highlight government procurement, where we are concerned about China's implementation of its government procurement law, which just came into force in January 2003. It applies to all goods and services procured by government entities. They are going to be releasing detailed implementing regulations sector by sector, starting with software. We think that the regulations they come up with in software are going to give us some hint as to their thinking for many other sectors, and it is important they get those right. They are going to be issuing a definition of local software, and we hope that that sets a low threshold of what is considered domestic software so that more American companies **can participate in the procurement market for software.**

So then how, looking at those broad challenges, can a CLDP be helpful? Well, first, I would acknowledge the excellent programs that the Department of Commerce is already carrying out, the technical assistance seminars on IP standards, franchising, and other areas. I would also recognize the good work of some private sector entities, including John's former employer, the U.S.-China Business Council, which launched a U.S.-China Legal Cooperation Fund in 1998. That fund has extended a number of important grants over the years to further develop transparent and impartial legal institutions in both countries.

But despite the impressive efforts being carried out, obviously the challenges remain. In the case of IP, they seem to be expanding in scope and dimension, not diminishing, so we think that a CLDP could make a valuable contribution to the business landscape.

Looking at how CLDP is operating in other countries, its programs are helping political, regulatory, judicial, and commercial leaders make important improvements in their policies. Significantly, a lot of CLDP's work is actually focused on WTO accession, and then implementation of WTO disciplines such as IP product standards and market access. So it is easy to see a link between the problems that we are facing and the kinds of positive contributions that a CLDP could make.

For example, with respect to transparency and the need for a more consistent use of advance consultations, CLDP is working with host countries to promote more transparent decisionmaking and to involve businesses in the development of policies that impact them. CLDP efforts resulted in the first-ever public outreach programs conducted by Russia's Ministry of the Interior, and regular business outreach programs by the Albanian Ministry of Trade and Industry, to name just two examples. And a CLDP program in Egypt has increased the acceptance of U.S. standards by initiating a relationship between ASTM International and the Egyptian Organization for Standardization and Quality Control.

I think the importance of having a U.S. Government program along these lines is even more clear when you consider what Hank raised, which is the efforts that our other trading partners with China are making, such as the EU and Japan. In the case of the EU, they are investing significant efforts into the development of cooperative programs in China that are geared toward improving the business prospects for European companies, and raising the

profile of the EU in that market. In 2000, the EU launched an EU-China Legal and Judicial Cooperation Program, focused on reform of laws in the criminal, trade and commercial, and administrative areas. China's MOFCOM is the main implementing agency, but this program also involves China's Ministry of Justice, the Supreme People's Court, and the National People's Congress. These are all important partners for the U.S. Government to be engaging in a more sustained way through a CLDP program.

I think standards, as Hank said, also represent a key issue on which the government has to adopt a more active approach. The EU and Japan, in many cases, have a more natural advantage because of their domestic industrial policies. In some cases, the United States has companies involved in competing standards, which restricts our ability to advocate. But in those areas where U.S. companies have a unified position, I think the CLDP could help us marshal our advocacy resources to help those companies.

Finally, I would just say that beyond the efforts that Commerce could carry out on its own, CLDP could make new funds available for, and help coordinate better the efforts of, other existing academic, research, and NGO efforts in this area.

As one example, the U.S. Chamber-affiliated Center for International Private Enterprise [CIPE] is eager to expand its rule of law programs in China. Its mission is to promote democracy through economic reform and private sector development. They would be effective in organizing, just as one example, a series of workshops to explore mechanisms and policies appropriate for the new economic environment created by China's WTO membership. A CLDP might also support an initiative like the new U.S.-China Business Mediation Center. The Chamber serves on an advisory committee to the Center. It is a commercial dispute facility that is helping U.S. companies and Chinese companies look for alternatives for the adjudication of disputes. We think that the greatest obstacle to increased use of mediation is a lack of awareness of how mediation can be beneficial, and a CLDP might be helpful in this regard.

So, wrapping up, we do think that the Chinese Government has made a sincere effort with respect to carrying out its commitments. We think it is important to distinguish, in areas where there are shortcomings, between those areas where they are willfully not carrying out their commitments and where there is a genuine effort under way, but there is just not the technical capacity to get the job done. I think a CLDP program could be helpful in those latter cases. CLDP programs have made a meaningful contribution in countries all over the world, and they certainly belong in China, a country that holds so much promise for U.S. companies. American companies have a great stake in China's success, and we should be deploying all available resources to help improve the environment.

Thanks.

[The prepared statement of Ms. Griffin appears in the appendix.]

Mr. FOARDE. Leslie, thank you very much. Lots of food for thought there.

Let me go on and recognize Linda Wells. Linda is the Chief Counsel for Commercial Law Development and the Director of the Commercial Law Development Program at the Department of Com-

merce in the Office of the General Counsel. We will hear more about the program from her, I am sure. But before she became the first director of CLDP she was Senior Commercial Counsel for the Overseas Private Investment Corporation [OPIC] here in Washington, and was also associated with the law firm of White & Case.

Linda, welcome. Please.

STATEMENT OF LINDA WELLS, CHIEF COUNSEL FOR COMMERCIAL LAW DEVELOPMENT, DIRECTOR, COMMERCIAL LAW DEVELOPMENT PROGRAM, OFFICE OF THE GENERAL COUNSEL, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, DC

Ms. WELLS. Thank you very much. Thank you for the opportunity to meet with you this morning. Not only is it always a pleasure to talk with you all, but it is always nice to hear somebody sing our praises.

The Commercial Law Development Program is part of the Office of General Counsel at the Commerce Department. We were created about 12 years ago for the purpose of providing support to countries that are either developing or in some form of transition to help them develop a more market-friendly legal and regulatory environment. So, basically, more briefly stated, our mission is to make it easier to do business.

We are a part of the General Counsel's office, as I mentioned. I should just explain because it confuses people sometimes. We are a separate part of the General Counsel's office, independent from the policymaking and the compliance aspects of the rest of the General Counsel's office, for example, the Chief Counsel for International Commerce or the Chief Counsel for Import Administration, and also from the International Trade Administration, people who are involved directly in negotiating and in compliance matters. The advantage to that is that, although our policy obviously is the same, we can take a track that is slightly outside the sometimes more confrontational or controversial aspect of the Department's relationship with other countries.

In addition to the programs that Hank mentioned, the General Counsel's office has also been engaged in a series of roundtables with its counterparts in China. Most recently, in December of last year, there was a program on U.S. corporate law. Previously, the Chinese have provided us with information about the changes that they are making as part of the review of their legislation for WTO compliance. The difference between what they can do and are doing, which is very important, and what we can do, is that the CLDP has the capacity to do types of assessments and follow-up and the development of an integrated package of assistance that is sometimes outside the capacity of some of the other offices, not only within the General Counsel's office, but also in other parts of the Department.

CLDP provides consultations. We do conferences. We have skills development programs. We can exchange experts. We actually sometimes post people inside ministries. We had one fellow working inside the Albanian Ministry of Trade for four years. He had an office there and just basically augmented their staff, in order to help them develop the internal capacity to achieve some of the

things that they needed to do in their accession to the WTO, and then, later, compliance with the commitments that they had made.

One of the things that CLDP can do is be a catalyst for reform. The WTO work that we do, which, as Hank and Leslie mentioned, is a very significant part of our portfolio, is oftentimes really just a lever that we can use to try to promote wider reforms, either in macroeconomic policy or in support of transparency and cooperation with the business community.

The strengths of CLDP, being a government agency, are largely in the government-to-government area and in helping governments work better with their private sector, because that is what we do. So, we can share that experience and, I think, bring some credibility and some shared pressures, concerns, and perspective to our counterparts that provides us, I think, with some measure of access that we might not otherwise have.

We work on a very wide variety of issues, financial services, intellectual property, standards, public procurement, privatization, judicial reform, pretty much the whole panoply of anything that might affect business. But WTO is a major part of our focus.

In the WTO work, we have done both accession and post-accession implementation assistance. In the course of an accession assistance program, our work may focus on policy development, for example, working with senior officials to understand market-oriented issues in countries that maybe perhaps have not had so much experience with that. Also, we do the technical side of it, providing skills development in macroeconomic analysis, econometric modeling, and things of that sort. We also provide assistance in the actual accession process. So, for example, supporting preparation of the memorandum of trade regime, helping with the preparation of answers to ensure that they are responsive to the concerns of the working party that is reviewing an application.

We also provide skills development training and negotiation, and also even for interpreters. One of the things that we found in many places is that the language becomes an artificial barrier because the interpreters do not know how to say what the policy people are trying to communicate.

From a more institutional perspective, we can work with our host governments to develop government organizations and private-public communication fora that enable them to formulate sound economic policy and to implement it within the government and through the business community. One of the things we find in many countries, for example, is they do not have a mechanism for coordinating within a government input into trade policy formation, and then later, execution. You wind up with a disjointed system where the people at the Ministry of Trade are totally on board, fully committed, but the guy in the next ministry does not really understand what they have done on his behalf and does not know how to execute what they have promised. So we can work, and have worked with many countries, to try to help support the development of both institutions and processes that lead to sound and consistent trade policies and compliance.

We work, obviously, in the legal and regulatory reform area, helping countries to evaluate their legal systems for compliance with WTO commitments and norms, and to develop reforms,

amendments, new legislation where that is necessary in order to bring them into compliance.

One of the steady things in all of the work that CLDP does is trying to promote transparency and trying to promote private sector participation in the formation of trade policy. As Leshe mentioned, I think this is one of the areas where, independent of the direct results that we are achieving, I think the attitude changes that come with that are really a significant part of what we are accomplishing around the world.

A large part of our accomplishment, I think, is actually outside the context of the specific technical assistance programs that we are conducting, although I do not choose to diminish those. I think we are achieving some very significant changes in both law, policy, and organizational structures. But I think we are also serving a useful purpose in the change of attitudes and the comfort level of foreign officials that the United States is working with. One of the advantages of a Commercial Law Development Program or other kinds of technical assistance is that you can discuss these issues outside the context of a specific negotiation or a specific trade dispute. In doing so, you can raise the comfort level of officials and others who may not really understand what you are asking or why you are asking it of them in this other context. If you can have the conversation as a sidebar, you can actually make them understand much better than in negotiations that are being undertaken why there is a conflict, and perhaps resolve it more quickly, or prevent it entirely.

I mentioned earlier, I think the ripple effect of what we are doing, particularly in the transparency area, is also significant. Once officials become comfortable talking with the business community, talking with other agencies, perhaps publishing things that they are considering doing before the decision is made, as they see that those are not really threatening, it is much easier for them to adopt those practices in other parts of their work and much more likely that they will demand others do the same with respect to them.

Finally, the development of professional relationships. One of the significant advantages, in my mind, of a Commercial Law Development Program is that, through our assistance programs, we get to know each other. We understand each other's ideas. We understand the values that we are using in approaching issues. We understand the technical difficulties that our counterparts have, either we have or our counterparts overseas have. That mutual understanding, and just simply the personal introductions, I think, have good, long-lasting effect. I know I can see in many of these, these are just programs that we have conducted, that people who participated have continued to have a relationship through the years afterward. That has made it possible for them to send an e-mail and say, "I am thinking about doing this, or I am going to do that, or what do you think, or do you know anything about this?" The communication that continues after the technical assistance program ends has been invaluable to the people at the Commerce Department and the other agencies with which we work.

Just in conclusion, Leslie talked about our work with other organizations. One of the things that CLDP prides itself on is working

with both private sector organizations from the United States, and also with other international donors. Where the European Union is doing a program, we may do it with them or we may balance their presentation with one of our own. Sometimes there are areas where we definitely, 100 percent, are on track with them, so we will let them spend their money on one thing, and then we can spend our money on something else, so that the result is a much greater use of both of our resources. There are a lot of times where the private sector can better affect the sort of results that we are looking for, and as a consequence of that, we bring in private advisors, we work in partnership with organizations such as CIPE and CIME, and the University of Maryland, and some of the other donors that you may know around here. I think that has proven a very effective strategy for us because it enables us to coordinate and to bring in all types of resources rather than just Commerce Department resources or government resources.

[The prepared statement of Ms. Wells appears in the appendix.]

Mr. FOARDE. Linda, thank you so much.

Thanks to all three of our panelists.

I am going to give you a chance to rest your voices for just a minute while I make an administrative announcement or two. In a few weeks, the entire transcript of today's roundtable will be available on our website. That is, www.cecc.gov. If you have not signed up already for our alerts, please do so there. You can also unsubscribe there.

I would also like to announce that our next roundtable will be held on Monday, April 19, after the Easter break, at 2 p.m. here in this room, 2255. Our topic will be North Korean refugees in China, and looking at the legal and policy aspects of the Chinese Government's attitude toward North Korean refugees. We will have three distinguished panelists: one from Refugees International, one from the Defense Forum Foundation, and a South Korean gentleman who has been very active in working on behalf of North Korean refugees in China. So, we look forward to seeing you here on April 19. An announcement will go out on our e-mail list in a couple more days.

Now let us turn to our question and answer session. Each of the staff members here will get a chance to ask a question and listen to the answer for about five minutes, and then we will do as many rounds as we have time for before about 12 noon. I understand that Hank may have to leave a few minutes early, so if you do, just let us know. We appreciate very much your participation while you are here.

Let me begin the questions by picking up on a couple of things that were both in Hank's presentation and Linda's. That is, in your work in other countries with CLDP, are there benefits that come from separating the compliance budgets and personnel from the technical assistance budgets and personnel, and would that be a good model for what we do with China?

Ms. WELLS. I think there is a place for both to be involved. Both can accomplish slightly different things. The advantage of having a separate group outside the compliance context is that we do not show up giving advice in week one, and then negotiating or filing cases against them in week two. We are still part of the Commerce

Department, so it is not total separation, but it gives us a little more credibility.

Mr. FOARDE. There is never any bleed-over? You never hear from your cooperators that, well, you guys are beating up on us because you just filed under 301, or something like that. Has that ever happened?

Ms. WELLS. We get lots of complaints. Sure. But what they can do, is they can say, those guys have filed a case against us. We are doing the best we can. What else do you want us to do? We can help them figure out how to resolve the problem, how to change what they are doing or how they are doing it so that it does come into compliance. We can offer them a sounding board so they can explore some of the options before they actually go into a negotiation to better understand why things are being asked of them, for example.

Mr. FOARDE. Anybody else have a comment on that?

[No response.]

Can you talk a little bit about where the funds come from for your CLDP programs?

Ms. WELLS. Ninety-nine percent of our funding comes from either USAID or the State Department through interagency agreements. They basically hire us to provide technical assistance.

Mr. FOARDE. So you have no program budget of your own, to speak of, for this sort of thing.

Ms. WELLS. Not even just to speak of. We have no program budget of our own. We also do occasionally work for USDA in cooperation with other international organizations, but, as I said, 99 percent of it is AID or State.

Mr. FOARDE. And those AID funds are normally ESF funds, or DA funds, or both? Do you know?

Ms. WELLS. It is a mix. It depends on where it is and even in some countries, we have a combination of different types.

Mr. FOARDE. Let me hand the microphone over to Dave Dorman, my friend and colleague, who is the deputy staff director of the Commission and works for Senator Chuck Hagel, our Co-chairman. Dave.

Mr. DORMAN. Well, first, thank you very much to all of you for coming today. This is a topic that is of great interest to all of our Commissioners. I should say, in particular, this is a topic that is of great interest to Senator Hagel, who has been working with our ranking member on the Senate side, Senator Baucus, and other members on the Senate side, to find some way to fund a CLDP for China in a very tough budget environment.

In conversations with Senate staff on this particular topic, a number of questions have come up. It would be very useful to answer these questions on the record because they are the sorts of questions other people might think of when considering a program like this. For the most part, I think that Congressional staff are aware that the Office of Market Access and Compliance is conducting technical assistance seminars. Understanding there is no CLDP program in China right now, but there are technical seminars ongoing, if funding was found for CLDP, what happens at that point? Do the sorts of technical seminars that are being conducted by Market Access and Compliance stop and CLDP picks up those

programs? Based on our own roundtable announcement, some technical seminars being conducted by Commerce offices with less than perfect skills in conducting such seminars. So the first part of that question is, what happens to the seminars that are being conducted right now? Is that a function that would be transferred to the CLDP office?

The adjunct of that question, and one that has come up frequently, is what sorts of coordinating mechanisms—occur between the CLDP office and Market Access and Compliance when both offices are active in a country? What are the sorts of contacts and conversations that go on between Market Access and Compliance and CLDP in terms of ensuring that we are making the best use of our dollars?

Ms. WELLS. Do you want to start?

Mr. LEVINE. Yes. I am happy to take a shot at the first question. Then Linda, based on her experience, can either add to that or whatever, and then Leslie can comment, too. What the heck. [Laughter.]

The first question, essentially, is a hypothetical in the sense of, "What would we be doing if there were a CLDP program?" I guess what I could say is that, were we in that position, we would obviously want to take a good, hard look at the current programs and activities, and then look at what CLDP could do. It would certainly be my hope—obviously depending on the budget situation at that time—that we in Market Access and Compliance would be able to continue to undertake activities that could dovetail with, or supplement, the activities that CLDP would be doing.

Getting to your second question, we would want to coordinate very carefully with CLDP and make sure that we are not duplicating and wasting scarce resources. So, I would hope that we could continue to add value by filling in gaps, or supplementing, or supporting and adding to other things CLDP would be doing.

Ms. WELLS. I would second that idea. As I said in my earlier comment, I think there is a place for both and there is a need for both. When the compliance people go and do technical assistance, they are there with a slightly different face than my folks are. That can be extremely useful. Just like we use private sector people to do some things and government people to do some things, having people from different parts of the government also can be useful.

I would share Hank's hope that what we would wind up with is a more integrated package. One of the things that having CLDP would do, in addition to the existing compliance programs, would be to enable us to perhaps do a little more of the diagnostic work to support them and get their work as part of a coordinated package. We could do some of the followup and some of the supporting assistance that might make it more likely for their programs to show the results that we would like to see. I think we would want to coordinate.

To answer your second question, whenever we are launching a new program, and periodically throughout the implementation of an existing program, we are consulting not only with other parts of the Department of Commerce, but also the business community, USTR, the State Department, Department of Agriculture, and other organizations to make sure that we are staying focused on

the issues that are of greatest concern, either because they are most important for our economic interests or because they are proving to be sticking points in the bilateral relationship. So, we are already consulting on a regular basis with other parts of the Department, and I am sure that that would continue.

Mr. DORMAN. Good. Thank you.

Mr. FOARDE. Susan Roosevelt Weld is our general counsel. Over to her for questions.

Susan.

Ms. WELD. I am interested in having the views of all of you, but especially Linda, from your experience in doing CLDP programs elsewhere. Are laws such as those in the PRC having to do with state secrets a problem with promoting transparency? Do any of the countries that you work in have that kind of legal framework?

Ms. WELLS. I will not comment directly on the Chinese law because I am not enough of an expert at this point. But, when we started working in Poland, for example, it was illegal for a business to show us their books. So it is not uncommon in the rest of the world that there are rules about what kind of information can be shared, that there is no prior publication. Forget about something you are considering for announcement or a notice-and-comment process. They do not even publish the laws, sometimes, even after they are adopted. They think, in some places, that it is bizarre of us to ask for them to do that.

Our experience has been, most of the time, that when you explain, when you have a discussion, when you can show your counterpart examples of what the benefits are of discussing things in advance, what the benefits of sharing the information are, if the objective of a law is to have people change the way they behave, then they need to know about it. If you give them some skills and you give them some experience, and you give them some comparative models that may not be quite as extreme as in the United States but are in that direction, that we found people to be quite responsive.

Ms. WELD. Thanks a lot.

Mr. FOARDE. It is now my privilege to recognize our friend and colleague, Selene Ko, who is chief counsel for commercial law on the Commission staff, and responsible for helping organize this roundtable. But I have to begin on a somewhat melancholy note, because this is Selene's very last issues roundtable for us. She is leaving us April 9 to go to the Office of the Legal Adviser at the U.S. State Department, where I worked some years ago. Perhaps in the future, she will help keep Hank Levine out of trouble. I want to thank Selene for being such a stalwart colleague, and such a dynamic force, on the Commission staff these past two years.

Now it is time for your questions. Go ahead.

Ms. KO. Thank you all for being here. As the panelists here know, this has been a particular effort on my part to examine the CLDP issue. One thing I thought might be good to have on the record, something that we have all discussed, both in the context of the CECC Annual Report and in private conversations, is: if everyone believes that CLDP would be such a good thing in China, why is there no U.S. Government budget for it? To whatever extent

you all might be able to share your thoughts on that, it would be appreciated.

Mr. LEVINE. Well, obviously, when we are looking at the overall Administration budget, those decisions are made at the White House, and ultimately by the President, looking at, as we all know, an enormous number of competing demands for limited tax dollars. Frankly, there is not much more that I could say. At my level, and generally in the Commerce Department, we work within the framework provided both by the White House budget, and then the money that is appropriated by the Congress.

Ms. GRIFFIN. Well, my understanding, too, is that I think there are some reasons why AID is not operating in China now, much like the Overseas Private Investment Corporation [OPIC] is not operating in China now. We would like to see these programs opened in China. I think that OPIC, just for example, is something that could be a valuable resource for American companies there. So, there are legacies of some past sanctions, I think, that have prevented some of these organizations from extending money for programs in China. We think it would be helpful to see us be able to take advantage of those.

Ms. KO. Thank you.

Mr. FOARDE. Let me recognize Carl Minzner, who is a senior counsel on the Commission staff as well.

Carl.

Mr. MINZNER. Thank you very much for coming here today. I quite appreciate the opportunity to hear your opinions about the CLDP program that I think many people would like to undertake. I want to return to something that you all touched on a little bit earlier. I think all of you talked, particularly you, Ms. Griffin, about types of projects and issues that the CLDP could be used to address. For the moment, I think I would also like to get more of your input on the format of particular projects, the particular way in which projects might be able to be carried out. All of you touched on this a little bit earlier. For example, we talked about having full-time staff members in other countries, notably in Albania. Ms. Griffin raised funding possibilities such as the U.S.-China Legal Cooperation Fund.

Could you all talk about programs in a little bit more detail? Speculate. It does not have to be a promise to undertake a particular program. Speculate on particular formats of programs that might be useful to undertake in China.

I appreciated something that Ms. Wells mentioned, that you noted that one of the things that is important in the Chinese context is establishing long-term relationships. I think you also said that with regard to many other countries. How could some of these issues be addressed through particular types of formats that programs might take if a CLDP China program were to be initiated?

Ms. WELLS. I do think, based on what I know about China, that the long-term issue is going to be particularly significant. I think, if we were in China, we would probably want to focus on that in structuring things. That insight would lead me to think that we would probably place a higher emphasis on having people resident in China. Given the problems that we see in national versus sub-national, central versus sub-central, implementation of WTO

commitments, that probably also means putting people outside Beijing. I think that one of the strategies we would want to employ in the sector-specific work that we might do would be to establish working groups that would meet on a regular basis. We have done this, for example, in Eastern Europe.

In Southeast Europe, we have, through the Stability Pact, some trade working groups that meet a couple of times a year. It is the same people. Simply getting those people together in one room has provided some continuity and some results that I think have been really significant, and might be a model to replicate in China.

Mr. LEVINE. I would just add for the record that I guess there have been a couple of references to the fact that some of the ongoing programs are undertaken by folks who do not have an enormous amount of background in doing programs. I think our folks who have been working on the current programs really are doing a superb job, with the resources and under the circumstances that they have been working.

Having said that, clearly, one of the limitations that we face in our current work is the constraints on our ability to have the more sustained type of effort, I think, that you are talking about. We do try to build in continuity to the extent that we can, so we might go out one year and have a seminar on IPR enforcement, and the next year try to build on that and follow up, and so forth. But in terms of the types of things that Linda is talking about that a CLDP is capable of mounting with a more sustained presence on the ground, that type of sustained and deep continuity is beyond our abilities at the moment.

Ms. WELLS. Could I just second what Hank is saying? A lot of the people who are doing the ad hoc work that the Commerce Department has been doing are the same people that we would use. It is not that those individuals are not good at what they are doing, it is simply that, when they come home, they have a primary responsibility to do something else. Their availability for designing and implementing follow-up work is just not the same as somebody whose purpose in life is to try to do that.

Ms. GRIFFIN. I do not really have a lot to add, other than if you look at the U.S.-China Legal Cooperation Fund's website and see the fund that they established, the types of grants that they have given, there are many different things you can do, whether it is an interdisciplinary seminar on WTO standards issues, or best practices manuals in Chinese, or training seminars for judges. There is just a whole series of things that can be helpful to us.

Mr. FOARDE. I would now recognize our friend and colleague Keith Hand, who is also a senior counsel on the Commission staff.

Keith.

Mr. HAND. Thank you all very much for your comments. A number of you raised the issue of local inaction versus lack of capacity. I am wondering if you could tell us what areas fall under the willful inaction category as opposed to lack of capacity. In the areas where the problems are primarily political, do you see CLDP playing a role or is CLDP only useful in the capacity building context?

Ms. GRIFFIN. It is funny. When I put that in my remarks, I feared I would get that question. There are far more baskets you could create. I mean, there are examples where there are legiti-

mate, if unwelcome, interpretations of ambiguous commitments that they made. At times there are aggressive interpretations of things that could be reasonably interpreted either way. There are cases where there is a blatant disregard for a commitment, cases where it is a technical capacity issue, and cases where they are just not putting enough resources into the problem, into addressing a problem. I would not try to assign a particular commitment to a particular category. When we entered into this process, we knew certain areas were going to be particularly politically sensitive, in agriculture and in other areas, where we knew the challenges would be particularly great.

But I do think that, in those cases where it is a case of technical ability and training that is keeping China from being able to carry out its commitments, that a CLDP program could be beneficial. There is one example that I think is really telling. If you look at, say, in the insurance sector and the kinds of changes China needs to make; in the case of the China Insurance Regulatory Commission [CIRC], is, at the same time, trying to create a regulatory regime for the insurance industry that is compliant with WTO; it is trying to review about 100 pending license applications; it is trying to train and deploy new officials in the new cities that are opening up as geographic restrictions come off; and it is trying to approve new insurance product offerings. All of this, for the entire country of China, with 600 officials at CIRC.

Now, by comparison, New York State's Insurance Commission has 900 people just working on that one state. So, it gives you a sense of the scope of the training effort that is needed and the technical capacity that is needed to be able to fulfill some of these commitments.

Mr. LEVINE. I think it was Albert Einstein who once said, "Things should be made as simple as possible, but no simpler." The fact is, in looking at China, this is an enormously complex problem. Like Leslie, I would hesitate to draw any percentages as to what percent is due to the lack of skills and what is due to lack of political will, or to assign particular topics to baskets. The simple fact of the matter is that there is no magic bullet here. In promoting U.S. interests in our relationship with China, we need to be making maximum efforts in every one of the areas. That is, on the policy side, we and USTR, by negotiating, and pressing and bringing WTO cases where we need to do that. But also on the development side, pursuing the maximum amount of capacity building and technical assistance that we can provide. Without assigning particular percentages or areas here, in fact both sides of the coin are enormously important and we really need to do as much as we can.

Ms. WELLS. If I can just add one technical point. There are ways that technical assistance programs can be used to help overcome policy resistance. I am thinking, for example, in the area of intellectual property. The people who are pirating products are very vocal and will make it clear that clamping down on them is going to cause problems for them. The rights holders whose product is being stolen, the local rights holders, and the people from the community who are being disadvantaged because they do not have access to products because companies will not sell into an environment where there is so much piracy, tend not to be vocal. One of

the things that assistance can do is to help them mobilize and more effectively articulate that they are an interest group, that they want their government to provide the sort of protection that the pirates may not want provided. It gives a different constituency a voice, and that can help overcome the policy issue.

Mr. FOARDE. Let me pick up the next round by trying to clarify a couple of things.

Linda, who are the experts that work for you? I know that CLDP here in Washington is a lean and hardworking group. So, clearly, with the level of effort that you have in the countries that you are operating in, you cannot do it all out of your office. Where do you get the people that work on programs in individual countries?

Ms. WELLS. From other parts of the Department, other government agencies, the private bar, the judiciary, educational organizations, people who are retired government officials. It is a wide mix. What we try to do is to identify who is going to have the best expertise, and then go after them. Who is going to be able to best communicate the issue to their counterpart?

Mr. FOARDE. So not just people from Commerce, but it could be from any part of the U.S. Government or educational institutions in the United States.

Ms. WELLS. Or law firms.

Mr. FOARDE. Law firms. Everything.

Ms. WELLS. Or other technical assistance providers. There are times we will hire someone else to do something. We have worked with CIPE, we have worked with CIME, we have worked with the International Law Institute [ILI], and a number of other not-for-profit organizations. We will also bring in consultants who will work for us for a daily fee.

Mr. FOARDE. So, without trying to get into too much of a hypothetical, in principle, if you had CLDP in China, you would draw on this same universe of experts to do the type of work that you might be able to do, if there were a program.

Ms. WELLS. That would be my expectation.

Mr. FOARDE. Right.

Another question for you that is related, and also comes from a comment that Leslie made in her remarks, about the capacity of CLDP to serve as a coordinator of U.S. NGO efforts and a clearinghouse, if I understood correctly. Is this happening already in the places elsewhere in the world where you work? If so, how does it work, exactly?

Ms. WELLS. It is happening. How it works in any given place may vary. In Russia, for example, where we have been working with them on their WTO accession for several years, we actually sit down a couple of times a year with the European Union and the British to talk about what their resources are, what issues they may address, what we might address, what things we want to do together and separately, so that we get the maximum bang for our buck.

Just for example, I mentioned earlier the Southeast Europe program. We are working there, among other things, on customs implementation for the regional free trade agreements that they are entering into. So we have got the World Customs Union, as well as the U.S. Customs Service, involved. We are also doing a pro-

gram with the American Chambers of Commerce [AmChams] throughout the region, so we have got the AmChams involved in that.

In other cases, one of the things that we have done with them is actually work on negotiation skills. So, we have brought in ILI, which does a very good negotiation training program, to essentially serve as a subcontractor to us. So what we are trying to do in all cases is identify what the obstacles are and figure out which resources should best be applied to get the results we are looking for.

Mr. FOARDE. While at the same time you are trying to avoid duplication. In other words, your own program is not doing something that a U.S. NGO is already doing.

Ms. WELLS. Right.

Mr. FOARDE. Or another country is already doing.

Ms. WELLS. Right. In fact, one of the things we sometimes do is offer to co-sponsor something that someone else was already doing, or to send people that we are working with to somebody else's program. In West Africa, for example, we have been doing some work in public procurement. We actually sent some people to another organization's conference because we thought it would be a good opportunity for them to meet with some international players.

I should mention that one of the things that we do, particularly in our regional programs, that might have some applicability in China, in Western Africa, for example, sub-Saharan West Africa, we are helping them to establish and to strengthen the capacity of alternative dispute resolution and mediation centers. There may be some applicability in China. And in addition to connecting them to centers here in the United States and to some Internet-based mediation services, we have also got them working together so that they are helping each other figure out how to select and train mediators. We have helped them put out a brochure about the resources available in the region. So, we are also working with our local counterparts to help them network.

Mr. FOARDE. Let me go on and recognize Dave Dorman for another question.

David.

Mr. DORMAN. Yes. I think we have come to conclusion on the difficult question of whether everyone here would support a CLDP program for China. But let me turn it around. Have the Chinese indicated in any way that they would be receptive to such a program? I know in your written statement, Linda, you mentioned you went to a seminar some years ago, and part of the purpose of that seminar was to gauge the receptiveness of the Chinese to a program like this. Do we know that there are open arms in China waiting for something like this to happen?

Ms. WELLS. Well, I will start, but I think Hank probably has more recent information. My experience with them personally has been that they were very receptive, that they are really very interested in hearing what we have to say. Whether they do something with it, I am not going to judge at this point, but they were extremely willing to talk. We spent hours over scheduled time going through issues and discussing the consequences of some of the things that we were talking about.

The rest of the General Counsel's office, as I mentioned, has been doing this legal exchange program. They have had the same experience: the program has been very much in demand on the part of the Chinese, and the information **has been very well received** and the follow-up communication quite steady. But you may have better information, Hank.

Mr. LEVINE. No. I think that, as a general matter, there is enormous hunger in China for the types of information, the types of activities that a CLDP undertakes. Again, we see it. Our problem, typically, is not being able to do enough, really, to meet the demand on the Chinese side for seminars, for information in many of the areas that are so critical to our interests. As a general matter, then, I think there is absolutely no doubt that China would welcome enhanced cooperation and activities in these areas. Now, I do not know enough about CLDP to know whether there are any specific elements or ways of cooperation and so on that would be particular problems in China.

If we talk about issues, as I understand it, CLDP is quite flexible in how it pursues its cooperation and, I would assume, would adapt itself to the Chinese system. For example, Linda mentioned that in some countries you might have someone who was actually assigned to a host government ministry. Again, at this stage, whether that type of an arrangement could work in China as a particular method, I do not know. The program would have to adapt itself. But there is absolutely no doubt in my mind that, in terms of the content, the types of activities, the Chinese would be very receptive, indeed.

Ms. GRIFFIN. I cannot speak to their views on accepting government-to-government assistance, but just in terms of business input, we have definitely seen a willingness of the Chinese to ask for our companies' input in a few different sectors. In particular, I know in direct selling and insurance there has been some good dialog going on. Typically, I found that they like to do it outside, in a low-key fashion, not with cameras flashing in a U.S.-China business negotiation of some kind. But, in a private way, they have reached out to us to have us bring some companies together to talk about an issue.

I think it speaks to the point each of us made earlier, which is that it is helpful to have a program like this outside of a formal decision that needs to be made, or a negotiation that is going on, and they are perfectly willing to hear what our companies have to say. It is in their interests to hear about the experiences our companies have had in other countries.

Mr. DORMAN. One of the things that always comes up in discussions that I have been involved with concerning CLDP—and you have already touched on it, Linda—is that our European friends and allies are much more involved in providing technical assistance of the type that we are talking about here than the United States has been engaged in. The underlying piece of this issue that always seems to be just there, is that the sorts of technical assistance that the Europeans are providing are beneficial to China, are beneficial to European countries, but somehow are against our interests. Is this true? Now, what I suspect, and maybe what you can help me with, is the answer to this question is far more complex.

But beyond that, this question plays into something that you said, Linda. Do our CLDP programs interact with other countries that are providing similar sorts of assistance, and coordinate those activities? Are programs like this reinforcing across the board?

So if you could all comment just briefly on these questions I would appreciate it. Thanks.

Mr. LEVINE. I am happy to start, and then Linda can talk in more detail about CLDP.

What you said is absolutely right. There are obviously elements of the programs that the EU or Japan, for example, or Australia, Canada, and others are running in China that are entirely consistent with the kinds of programs we would run if we had the resources and we were running them, and they contribute to transparency. They contribute to the rule of law, et cetera, and there is no issue.

On the other hand, clearly there are also areas in which some of the ideas that are being presented, to the extent they are accepted by the Chinese, would give companies from the EU, for example, or from Japan an edge in the market. One of the obvious outstanding areas is the area of technical standards. In fact, what we have seen in any number of areas is China adopting standards that are based on European standards, for example, in many cases to the detriment of our companies.

Interestingly, what you find is that very often the companies in the United States that would have the greatest problems as a result of that type of standard-setting process tend to be the smaller companies.

The big multinational company that is already operating globally, they are operating in Europe, they are operating in Japan, and so forth, might find it easier to accommodate itself to a European-type standard, for example, for a product that could be sold in China. On the other hand, our smaller U.S. companies would be the ones who would have a much harder time with that, and that is why with the resources that we currently have, we have put a relatively large amount of effort into the standards area. We really do see it as a priority.

So I think that standard setting is a classic example of where the agendas are slightly different, but there are going to be many other areas where they are quite similar, with no problem at all.

Ms. WELLS. Just to reinforce what Hank said, standards, I think, is the key area where we find that there is some difference. Particularly since so many of CLDP's clients are countries that are in the process of acceding to the European Union and are very Europe-oriented, standards is a special issue in a lot of our programs. We can provide a balance. We can explain that you can set up standards that provide you with safe, quality products without excluding anybody's products. Just that added perspective, I think, sometimes is very beneficial to U.S. exporters.

The other area you mentioned has about reinforcing messaging. One of the reasons that we like working with other assistance providers is that if the United States goes in and says, this is a good idea, it is the United States saying it is a good idea. But if the United States, and the Europeans, and the Japanese, and some other countries come in and say, "We all do the same thing, or

some version of the same thing," it is not a policy push, it is just the way the international market works, and it makes some of those reforms that we are suggesting a lot more palatable.

Mr. LEVINE. Maybe I would add just two further thoughts. There is one other area that comes to mind, for example, at least potentially. I do not think it has been that much of an issue, but an area such as competition policy, for example, where there could well be some differences in the way that the United States and the European Union look at the issue of competition policy. So, there are some other issues that would come to mind. But reflecting on it here, beyond that there is another point in all of this. Even in areas where the ideas that we would be presenting would be identical, or quite similar to the ideas that other countries were presenting, in the process of running the program you are developing relationships. In many of these programs, in fact, the audience is not just government officials. The government that is funding the program will bring in representatives of their companies to participate. So even where the fundamental content and the ideas of the third country's program are identical to something we might do, there is a relationship building in a U.S. program. I do not want to say a marketing effort, but there can be some significance. So just to flag that when we are thinking about the competitive aspect here. It is a significant issue and leads us in the direction of concluding that the United States should be doing the maximum that we are able to do in undertaking these types of programs.

Ms. GRIFFIN. There is nothing I can really add to what has been said on the subject, other than the point that Hank brought up about small business. Just to put on the table that, yes, small business has a real stake in these programs and their success, whether it is in standards or whether it is in, for example, transparency. I think more small businesses would be looking at China if it did not seem like such a morass of regulations that they do not understand. With respect to IP protection, these companies do not have armies of lawyers to go out and file patent cases and things like that. So, I think that these programs could be really beneficial for small business.

Mr. FOARDE. Susan Weld, another question?

Ms. WELD. I would love to ask about your programs to encourage implementation, especially in the IP area. How do you go about that? I am thinking of a seminar out of one of the Asian conferences about implementation of the laws against piracy. One presenter said foreign firms go in and do implementation work on behalf of the Chinese Government, whose efforts had not been effective. I wonder, what are your views?

Ms. WELLS. We are the slow and steady type rather than fixing a problem quickly, which some people find frustrating, but in our view it has a more beneficial long-term effect. Our objective is to put ourselves out of business, essentially. Our strategies are designed to make it possible for our host to do whatever it is that needs to be done themselves. So what we would do on focusing on any sort of implementation issues, is to figure out why it is not already being implemented. So whether it is a policy matter; whether the senior management did not really buy into the commitment that somebody else made on their behalf; whether it is a knowledge

issue—they do not know how to do what they have committed to do; whether it is a resources issue; we are a lot more limited in what we can do to solve that sort of thing, except that we can bring attention to the fact that there is a resources issue. Sometimes it is a communication issue. We can help with that. So, we will try to figure out what is missing in the implementation chain and see if we can focus on that. Is that responsive to what you were trying to get to?

Ms. WELD. More or less. I wanted to follow-up, to ask about the idea of placing someone inside of a Chinese Government agency. Do you think that is something that would be possible? I know, with respect to some of our assistance on HIV-AIDS, it has been effective to put people inside of the Ministry of Health. So, I wonder if that is something which could be done as you do your work in China.

Ms. WELLS. I do not think there is a single answer to that. I think that, in some places, it might be possible and welcome. In other places, even if it were welcome, it might not be appropriate.

My experience is similar, I think, to what Leslie was saying, that while people were eager to talk with us, sometimes they did not want to talk to us in their office. So, it might be more effective to have some off-site place. In our other programs, we have found that the utility of having somebody inside the government has evolved. In Russia, for example, we had somebody inside the Ministry of Trade for a long time. Then we got to a certain point in the relationship where that really was not the practical way to do things, and we moved them offsite. In fact, at this point our Russia office is staffed by Russians rather than being staffed by Americans.

So things evolve. I think we just have to figure out, with respect to the particular agency that we wanted to work with, what the best way of doing it would be.

Ms. GRIFFIN. Correct me if I am wrong, but the Quality Brand Protection Committee in China [QBPC], which is bringing together U.S. entities, Japanese entities, EU entities to try to make progress on IP enforcement is, if I am not mistaken, actually housed within a government entity. It is within an association for enterprises with foreign investment that falls within the Ministry of Commerce. I think they have found that to be an effective means to develop a comfort level within the government about their activities.

Mr. LEVINE. I would just add that I think the answer is, as Linda also was suggesting, that it depends. It would be something that would have to be approached on a case-by-case basis, thinking through—again, as Linda said—whether this approach is the best way forward on this particular issue. In fact, my understanding is that the U.S. Centers for Disease Control has someone in Beijing who is co-located basically with the Ministry of Health.

Ms. WELD. That is right.

Mr. LEVINE. So on that issue, CDC does have someone. Now, whether that is something that could be automatically or easily replicated across the board with all ministries on all issues would remain to be seen. But certainly that, as one tool would be one of the things that people would want to look at and see. If it turns out in a particular case that that is not possible or not the most

effective method, then I know CLDP has lots of other arrows in its quiver.

Mr. FOARDE. It is fitting that, as we are coming up on the end of our time this morning, that I would offer the last set of questions to Selene Ko.

So, Selene, please go ahead.

Ms. KO. This is a question for Leslie and Hank. When you talk to people in China who participate in technical assistance programs, what kind of feedback do you get from them with respect to U.S.-sponsored technical assistance as compared with the kinds of programs that are offered by China's other trading partners? Beyond substantive differences, do they find there to be any other differences in terms of quality or the way information is presented that could inform how a U.S. Government-sponsored CLDP program might be able to operate in China?

Ms. GRIFFIN. I have not talked to folks who have compared for me.

Mr. LEVINE. I do not have a detailed response, but it is a very good question. I have not had occasion, ever, to get into a detailed discussion and hone in on the topic of discussion. It would be interesting for me to ask my colleagues out at our embassy. What we do hear frequently is that, quality aside, we hear the issue of quantity. Chinese officials note the very extensive efforts that the EU, in particular, is undertaking.

We often hear that comparison, that the U.S. Government seems to be doing a lot less than, for example, the EU is doing. So, in terms of quantity, we hear that. With regard to quality, that is something to look into.

Ms. GRIFFIN. Actually, the only thing related to your question is, first of all, our companies say that they want to make sure that, with these CLDP programs, that the private sector has an adequate opportunity to contribute to the shaping of the training programs. So, that is one point.

The second thing I would say with respect to transparency in our own system, is that I think people need to get a better understanding of where exactly funds for this type of effort reside throughout the U.S. Government. It seems like there will be a Patent and Trademark Office [PTO] delegation out in China, and then they will learn that there is a State Department delegation in a neighboring province. I just think it would be helpful if someone could somehow put in one place all of these activities and all of the sources of funding that exist for them.

Ms. KO. Thank you very much.

Mr. FOARDE. We are close to the end of our time. So, on behalf of Congressman Jim Leach, our Chairman, and Senator Chuck Hagel, our Co-chairman, and the other members of the Congressional-Executive Commission on China, thanks to Hank Levine, Leslie Griffin, and Linda Wells for being so generous with your time this morning on this gray, rainy Friday, and for sharing your views and your insights with us.

Again, the Commission staff will hold another staff-led issues roundtable on Monday, April 19 at 2 p.m. here in this room on North Korean refugees in China.

Thanks to our panelists and to all who attended. We will bring this one to a close for today. Thank you all.

[Whereupon, at 12 p.m. the roundtable was concluded.]

APPENDIX

PREPARED STATEMENTS

PREPARED STATEMENT OF LESLIE C. GRIFFIN

APRIL 2, 2004

I. INTRODUCTION

Thank you for inviting me here this morning to share the U.S. Chamber's views on establishing a program to support commercial rule of law development in China. As the largest business federation in the world, with member companies of every size, sector, and region, the U.S. Chamber is well placed to offer its views on issues of commercial significance in the U.S.-China relationship.

The U.S. Chamber believes that there would be great value in establishing a Commercial Law Development Program (CLDP) in China consistent with Section 511 of U.S.-China Relations Act of 2000. New initiatives and technical assistance provided under such a program would help China strengthen its capacity to more fully implement its WTO commitments and to create a more predictable and transparent business environment for U.S. companies.

II. U.S. CHAMBER SUPPORT FOR CHINA'S WTO ACCESSION

The U.S. Chamber strongly supported China's accession to the World Trade Organization.

It did so because of its belief that China's entry into the global trading body would encourage the growth of private enterprises in China, foster greater openness, deepen the country's reform efforts, and help to create a sound business and legal framework.

The trade and investment liberalization measures to which the Chinese government has committed itself are impressive and the steps required to implement them are enormous. Well over 1,000 Chinese trade laws, rulings, and regulations have been reviewed for WTO consistency, and many new laws and regulations are being written to cover industries previously off-limits to foreign participants.

Throughout the Chinese government, major departments have set up WTO committees to review industry-specific laws. Meanwhile, millions of officials, legislators and judges are being trained to regulate a market economy. The challenge is particularly difficult in China's interior, where few officials are familiar with the WTO's mandates. Hundreds of WTO case studies are being translated into Chinese and WTO training centers have been established in a number of cities.

Implementation of obligations as broad as China's was always understood to be difficult, and American businesses have never assumed that it would be a short or easy ride. In some respects, China's implementation efforts have been impressive, and the rapid growth in two-way trade and investment into China reflects this. But in other areas, including intellectual property rights protection, transparency, standards, and government procurement, among others, additional progress is needed and a CLDP in China could be very beneficial.

China's leaders have made a serious commitment to WTO compliance and to more transparent decisionmaking. But these same leaders acknowledge that they don't have the depth of experience or trained personnel on hand in many areas to carry through with the major commitments the country has made in such areas as financial services or the expansion of distribution rights. Having the opportunity to work with Chinese officials outside the framework of a specific negotiation or decision will allow U.S. officials to share expertise and best practices, frame issues in a broader context, and generally encourage greater cooperation in the future.

III. CONTINUING COMPLIANCE CHALLENGES

Over the first 2 years of China's WTO membership, the U.S. Chamber has undertaken to observe and encourage the country's progress with implementing its WTO commitments through its China WTO Implementation Working Group chaired by corporate leaders in a range of industries. In its 2002 and 2003 reports, the Chamber highlighted both China's areas of progress and its shortcomings. Without going into a long list of sector-specific issues, let me highlight a small number of the broad challenges faced by our member companies in China and the changes that we hope to see before offering some thoughts on the potential benefits of a commercial rule of law program in addressing these issues.

Transparency

Transparency in the legal and regulatory environment remains a key concern for U.S. Chamber members operating in China. Improvements in regulatory clarity and the consistent use of advance consultations would do much to advance the prospects for success in industries ranging from autos to direct selling to insurance to telecom.

In line with its WTO commitments, as well as internationally accepted standards and good business practices, China should give both local and foreign professionals a reasonable period of time to review and comment on proposed new measures. The international experience that many foreign professionals bring to China can be of great assistance in the development and acceptance of market-oriented and economically sound policies. Ministries should establish and maintain a regular dialog with industry experts to address the needs of various sectors.

Regulators must not also be competitors in the marketplace. In the area of express delivery services, for example, China Post's regulatory functions must be separated from its business functions. Similarly, in the telecommunications sector, additional measures are necessary to increase the independence of the regulator, the Ministry of Information Industries, from the major state-owned operators in the telecom industry.

China's transparency obligations will make its governing institutions more accountable, thus limiting opportunities for corruption. Government procurement transparency, for example, will help stimulate competition and reduce the likelihood that business opportunities will be directed to well-connected enterprises.

Intellectual property rights

After nearly 2 years of membership in the WTO, it is clear that the China's intellectual property rights (IPR) enforcement system still has significant weaknesses and is far from effective. Foreign investors in China lose billions of dollars each year due to piracy and counterfeiting.

Enforcement of IPR will not be effective until civil, administrative, and criminal penalties are routinely applied to infringers of IPR. While China's government at the central and provincial levels carries out raids and other enforcement actions, administrative penalties are small or nonexistent and there is no commitment to pursue criminal prosecutions with deterrent penalties.

Counterfeit pharmaceuticals are a significant problem in China, especially in the area of over-the-counter products sold outside of hospitals, and the agriculture sector reports evidence of counterfeit fertilizer. Pirated music, books, business software, movies, and video games are also readily available on the market, and unauthorized use of software by businesses is rampant, hindering the ability of both indigenous and U.S. creators and rights holders to build successful businesses. Newly emerging problems include Internet piracy, such as the illegal and unauthorized download of online journals and other materials. Moreover, counterfeiting is taking place in industrial sectors such as the automobile industry, where there is increasing theft of industrial designs.

The U.S. Chamber would like to see China undertake a coordinated nationwide IPR enforcement campaign. The government should make revisions to the penal code such that it fully applies to all rights under copyright as well as all other piracy-related crimes. At the same time, China should take more effective customs and border measures to curtail the massive importation of pirated materials into the country. To support these efforts, China should continue with its efforts to train judges in IPR laws; provide adequate resources to relevant police, prosecutors, and administrative agencies; and ensure that penalties for intellectual property violations are sufficiently strong to serve as a deterrent.

Standards

The U.S. Chamber is concerned about China's use of discriminatory standards to erect barriers to fair competition. For example, China's adoption of mandatory national technology standards that are out of step with international standards efforts and that don't consistently respect intellectual property rights are troubling to the U.S. IT industry, many members of which have made significant investments in China. With its strong manufacturing capabilities and rapidly growing consumer base, China will play an increasingly important role in the development of the Asian and global IT industry.

The U.S. Chamber would like to see the Chinese government participate more actively in international standard setting bodies and align China's national standard development efforts with internationally recognized and developed standards and practices. In addition, we hope to see the government foster respect for intellectual property rights embodied in standards, including through the adoption of rules that are consistent with international practice for the treatment of intellectual property

in standards negotiations. For China, these steps will ensure the interoperability of products used and/or produced in China with those in the rest of the world.

Government procurement

The U.S. Chamber is also concerned about China's use of the government procurement law to protect local industry. The procurement law came into force on January 1, 2003, and applies to all goods and services procured by government entities. Implementing rules will eventually be developed for all sectors, but the government is beginning with the software sector. The way in which the law is implemented for software will set a precedent for the way the other sectors are treated. An open, competitive, transparent, nondiscriminatory and technology-neutral government procurement regime is in China's interest and in the interest of China's major trading partners.

Detailed implementing regulations and a definition of local software are expected to be released in May. U.S. industry has proposed definitions of "domestic" to Chinese authorities for their consideration, but it is unclear whether this input will be utilized. We encourage the Chinese government to make the threshold for what constitutes "domestic" as low as possible to maximize the number of U.S. companies that can participate in the government procurement market for software.

IV. VALUE OF A COMMERCIAL LAW DEVELOPMENT PROGRAM IN CHINA

Since the passage of the U.S.-China Relations Act in 2000, the U.S. Department of Commerce has conducted a number of technical assistance seminars in China, including valuable training programs focused on intellectual property rights, standards, and franchising. Private sector commercial rule of law efforts also exist, such as the U.S.-China Legal Cooperation Fund established by the U.S.-China Business Council in 1998. The latter program has extended a number of important grants over the years to support the further development of strong, transparent, impartial, and equitable legal institutions in both nations.

But despite the impressive efforts being undertaken by the U.S. government and private sector to address China WTO compliance and commercial rule of law issues, significant challenges remain. And in the case of intellectual property protection, the challenges seem to be expanding, not shrinking, in size and dimension. Beginning a Department of Commerce-run Commercial Law Development Program (CLDP) in China would make a much-needed contribution to the long-term improvement of the business landscape faced by American companies in China.

CLDP programs operating in other parts of the world are helping political, regulatory, judicial, and commercial leaders to make important improvements in their policies, laws, and organizational structures. Significantly, a major portion of CLDP's efforts support WTO accessions and implementation of WTO disciplines, including in areas like intellectual property rights, product standards, and market access, among other areas. One can quickly see a link between the types of challenges encountered by the U.S. business community in China and the beneficial role that a CLDP program could play.

With respect to transparency and the need for a more consistent use of advance consultations, for example, CLDP is working with host countries to promote more transparent decisionmaking and to involve businesses in the development of policies that impact them. CLDP efforts resulted in the first-ever public outreach programs conducted by the Russian Ministry of the Interior and regular business outreach programs by the Albanian Ministry of Trade and Industry, to name but two examples. And a CLDP program in Egypt has increased the acceptance of U.S. standards by initiating a relationship between ASTM International and the Egyptian Organization for Standardization and Quality Control.

The importance of having a sustained U.S. Government program along these lines in China becomes more clear when one considers the commercial rule of law efforts being undertaken by other Chinese trading partners, like the European Union. The EU is investing significant efforts into the development of cooperative programs in China that are geared toward improving the business prospects for European companies in China. Currently, for example, the European Union runs a EU-China Legal and Judicial Cooperation Program that helps to address the concerns of European companies in China and raises the profile of the EU in that market.

Launched in March of 2000, the program's focus is on reform of laws in the criminal, trade/commercial, and administrative areas and on capacity building in China's legal and judicial organizations. China's Ministry of Commerce is the main executing agency, but other implementing agencies include the Ministry of Justice, the Supreme People's Court, and the National People's Congress. These are important partners for the U.S. government to be engaging in a more sustained way, through a program like CLDP, on commercial rule of law issues.

Standards represent a key issue on which the U.S. Government must adopt a more active and strategic approach in China. The EU, the Japanese, and others in many instances have a natural advantage on standards because of their domestic industrial policies, and they work hard to advance their companies' interests. Though in some cases U.S. companies are involved in competing standards, which restricts the U.S. government's ability to intervene, through a program like CLDP the U.S. Government could marshal its advocacy resources for those sectors and technologies in which there exists a unified U.S. company position.

V. SUPPORT FOR OTHER NGO EFFORTS

Beyond the efforts that Commerce could carry out itself with its own internal expertise, a CLDP could make new funds available for other business, academic, and other non-governmental efforts focused on promoting private sector participation in trade policy formation and efforts to strengthen the commercial rule of law.

As one example, the U.S. Chamber-affiliated Center for International Private Enterprise (CIPE) has expressed interest in expanding its rule of law programs in China. CIPE's mission is to promote democracy through economic reform and private-sector development. CIPE would be effective in organizing a series of workshops in China to explore mechanisms and policies appropriate for the new economic and social environment created by China's WTO membership. With participation by local government officials, business executives, legislators, economists, and lawyers, CIPE programs could, for example, focus on the economic impact of China's WTO membership, emphasizing the need for specific institutional changes including making the judicial system more independent of government and political interests.

A CLDP also could support such initiatives as the new U.S.-China Business Mediation Center, just launched in the fall of 2003. The U.S. Chamber serves on an advisory committee to the Center, a commercial dispute resolution facility that helps U.S. and Chinese companies develop alternatives to adjudication of disputes that may arise between them. The greatest obstacle to increased use of mediation between Chinese and American businesses is a lack of awareness among companies and lawyers of how mediation works and the business benefits that mediation can offer. A CLDP could be useful in this regard.

A CLDP could also play an important role in coordinating these various non-governmental efforts by sharing access to relevant players and promoting consistent messages in ways that would make each effort more effective.

VI. CONCLUSION

The U.S. Chamber believes China has made a sincere commitment and effort to comply with WTO obligations. But China does not currently have sufficient personnel with the experience or technical background and training needed to develop and implement market-oriented laws and regulations. As one considers China's WTO shortcomings, it is important to distinguish between areas where the country is willfully not carrying through with a commitment versus those where there is a legitimate effort underway but there is a lack of technical capacity to get the job done. A CLDP program could be of great assistance in the latter cases.

CLDP programs have made a meaningful contribution in countries all around the globe, from Central and Eastern Europe to the Middle East to Africa to the former Soviet Union. They certainly belong in China, a country that holds so much opportunity for American companies of all sizes and for the global economy. China's WTO compliance and economic reform challenges are enormous and the U.S. Government should be deploying all available resources and working cooperatively with China on these efforts. Clearly the American business community has a strong stake in China's success.

PREPARED STATEMENT OF LINDA WELLS

APRIL 2, 2004

MISSION

The mission of the U.S. Department of Commerce Commercial Law Development Program (CLDP) is to improve the legal environment for doing business in developing and transitional countries around the globe, and thereby foster greater political stability and economic opportunity for local entrepreneurs and U.S. companies alike.

METHODS AND ISSUES

CLDP consultative services and training programs assist political, regulatory, judicial and commercial leaders to identify and make needed improvements in their policies, laws and organizational structures. CLDP activities are designed to meet the evolving needs of its hosts. They include, among other things, major conferences that introduce large groups to new issues, highly technical skills training for small cadres of local experts and resident (or itinerant) consultants who spend significant time working in a country executing longer-term projects or consulting on issues that benefit from on-going cooperation. CLDP activities serve as a catalyst for change, enabling leaders to take steps that, while important for the long term economic health of their nation, may be difficult in the short term. As a U.S. Federal agency, CLDP is particularly strong in providing government-to-government assistance and in helping governments and their business communities to communicate more effectively. Most CLDP activities are funded by the US Agency for International Development.

During fiscal year 2003, CLDP conducted approximately 100 discrete technical assistance activities. This is in addition to the daily assistance provided by CLDP's overseas offices and resident advisors and the information provided by the websites and newsletters CLDP sponsors.

A significant portion of CLDP's activities support WTO accessions and implementation of WTO disciplines including laws and procedures affecting intellectual property rights, customs valuation, market access, trade remedies, and product standards, among other things. In addition to its work with respect to WTO disciplines, CLDP provides technical assistance with respect to mortgage, insurance and other financial service regulatory matters, government, judicial and business ethics, public procurement, electronic commerce, anti-trust, privatization of state-owned enterprises, alternative dispute resolution, investment, judicial case management, trade policy analysis, econometric modeling, project finance, trade finance, spectrum management, public notice and comment processes and negotiation skills.

CLDP also provides support to local business, research and governmental organizations that promote private sector participation in trade policy formation and regional legal harmonization (merging common law and civil law traditions, for example) and regional economic integration (simplifying cross-border trade within a region).

In addition to its policy and skills oriented activities, CLDP works with leaders to develop more effective intra-ministerial and intra-governmental organizational structures and administrative procedures.

RESULTS

Since its inception in 1992, CLDP has provided technical assistance to more than fifty countries in Central and Eastern Europe, the former Soviet Union, the Middle East, Northern and Sub-Saharan Africa and South-East Asia. In addition to maintaining full-time advisors and assistance support offices in Moscow, Kiev, Chisinau, Riga, Vilnius, Tallinn, Bucharest, Sofia and Tirana over the years, CLDP has conducted more than 500 separate training and short-term consultation programs and provided training to more than 8,000 policymakers, regulators, judges, lawyers, teachers and business persons.

CLDP provided WTO accession technical assistance to six of the first eight post-Soviet states to join the WTO (Bulgaria, Estonia, Latvia, Lithuania, Albania and Moldova). CLDP also is working with the governments of Russia, Ukraine and Algeria to facilitate their WTO accessions. CLDP continues to provide assistance to Moldova, Albania, Egypt and other nations struggling to implement their WTO commitments.

CLDP assistance has been instrumental in public procurement reform, adoption of investment, intellectual property, insurance, mortgage, and a wide range of other legislative and regulatory reforms in many of its host countries. CLDP has assisted with the creation or reorganization of trade policy agencies in Eastern Europe, the Middle East and Northern Africa, anti-monopoly offices in Northern Africa and Eastern Europe, and intellectual property regulatory and business organizations in Nigeria, to name a few.

CLDP also has served as a catalyst for regional economic integration in Eastern Europe, Sub-Saharan Africa and Western Africa through facilitation of the negotiation and implementation of free trade agreements and the creation or strengthening of regional organizations working to promote harmonization of laws, regulatory procedures and dispute resolution mechanisms of importance to business.

CLDP is working with all of its host countries to promote more transparent decisionmaking and, in particular, to involve businesses in the formation of policies that

affect them. These efforts have resulted in the first ever public outreach programs conducted by the Russian Ministry of the Interior and regular business outreach programs by the Albanian Ministry of Trade and Industry, to cite but two examples.

In addition to the direct results of its technical assistance, CLDP has found that its activities have equally important indirect benefits.

First, the exposure to new, market-oriented ideas helps host country participants to explore concepts that may be totally unfamiliar to them or with which they may have only enough familiarity to feel uncomfortable, and therefore resistant, when expected to incorporate the concepts into their daily work. Having the opportunity to discuss the concepts with knowledgeable parties outside the context of a specific negotiation or decision enables them to become comfortable with the issue, to understand its broader significance and to understand how it affects their role and the concerns of their constituencies. This, in turn, results in more effective participation in future negotiations and better decisionmaking when presented with these issues in the course of their work.

Second, experience has shown that principles shared during the course of technical assistance activities blend into other aspects of the participants' lives. An official who grasps the benefits of transparency and has learned to incorporate transparent procedures in one aspect of his work, for example, is more likely to incorporate such procedures in additional aspects of his work, and to demand that others do the same.

Third, the opportunity to discuss issues of common interest outside the demands of our official relationships has enabled all participants, whether from the US or abroad, to develop a better understanding of the challenges we all face, the special obstacles that each country must grapple with and the values and processes we are applying when making decisions. Counterparts from both countries also have an opportunity to spend time working together toward a common objective. All of this leads to better communication and generally better cooperation in the future; we and our overseas partners know who to call if a question or a problem arises and what each of us is likely to consider in trying to address the matter.

SYNOPSIS OF CLDP PROGRAMS

CLDP has conducted too many assistance activities to note here with any completeness, but the following provides a brief synopsis of its work.

Central and Eastern Europe

CLDP assistance in Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Romania and Bulgaria and Albania concentrated on WTO accession, public procurement, government ethics, intellectual property rights, foreign investment, project and trade finance, customs, export controls and product standards matters. The countries with which CLDP worked on WTO accession and export control matters all succeeded in joining the WTO in relatively short order after CLDP began working with them and all became founding members of the Wassenauer Arrangement. These CLDP programs (other than in Albania) ended in the mid-1990s when AID closed or curtailed its funding for work in those countries.

In 2000, CLDP returned to the region as part of the USG's Stability Pact activities with the twin objectives of promoting trade liberalization in each of the countries in the region and promoting greater trade and economic integration within the region. CLDP and other donors are working with Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania and Yugoslavia on this project.

In addition to these regional efforts, CLDP has been working with Albania continuously since 1992, first to help with the creation of key commercial laws and the introduction of market-oriented policies, then to support Albania's WTO accession and now to aid implementation of its obligations as a new member and to strengthen its technical capacity to make sound trade policy decisions.

New Independent States

CLDP began working with Russia, Ukraine and Moldova in the mid-1990s to facilitate their accessions to the WTO, including the policy, legislative, regulatory, negotiation, communication and other skills development work inherent in those countries' transition to market economies and to WTO compliance. The focus of CLDP's work in Moldova shifted to implementation with their recent accession. CLDP's Ukrainian program continues to support the working party process, but has a particular emphasis on improving intellectual property rights protection. In addition to ongoing efforts to support the working party process and legislative reform, CLDP's activities in Russia have added significant efforts to encourage public outreach and to assist with sub-national implementation of WTO commitments that Russia will be making. CLDP also conducted a limited program in Russia with the

objective of improving communication among Russian law enforcement bodies and between them and the Russian business community, particularly US businesses operating in Russia.

Middle East and North Africa

CLDP's Egypt program is quite eclectic, incorporating work in intellectual property rights, trade policy, anti-trust, trade remedies, alternative dispute resolution, mortgage and insurance regulation, e-commerce-related spectrum management issues, and training of diplomats in economic policy and international commerce issues, among other things. CLDP, which was a relative late-comer to the Egyptian assistance provider community, has been able to work very successfully with other assistance providers to complement their work by providing information or advisors to which they did not have the same level of access as CLDP or by being able to fill specific assistance requests on very short notice.

CLDP's work in Northern Africa (Tunisia, Algeria and Morocco) has concentrated primarily on electronic commerce, public procurement, anti-trust, insurance regulation, technology sector development and WTO accession/compliance issues. In 2003, CLDP also launched a program to support negotiation and implementation of the Moroccan Free Trade Agreement.

We expect to launch a regional commercial law and financial services reform program that will involve most of the countries of North Africa, the Middle East and the Gulf as part of the Middle East Partnership Initiative during 2004.

Sub-Saharan Africa

In West Africa, CLDP has focused on alternative dispute resolution, judicial case management, intellectual property rights, judicial ethics and investment codes and has fostered creation of several international committees, all with the overall objective of increasing regional legal integration. Countries participating in the West Africa program include Benin, Burkina Faso, Cameroon, Chad, Congo, Cote d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Niger, Nigeria, Senegal and Togo.

In Nigeria, CLDP's work has concentrated on improving the protection of intellectual property rights through strengthening the public and private stakeholder organizations, fostering dialog between them modernizing the legislative and regulatory framework for protection of patents, trademarks and copyrights and increasing public appreciation of the value of (and need to respect) intellectual property rights.

CLDP worked with the Southern African Development Community (SADC) to help its members self-diagnose compliance with their TRIPs obligations and to develop strategies for bringing themselves into compliance and for using the SADC administrative structures to facilitate that result. Countries participating in the SADC program, which has now concluded, were Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

CLDP has been working with Angola to introduce modern judicial case management techniques into the Angolan courts to support their efforts to improve both the speed and transparency with which matters are handled by the court.

CLDP also conducted four programs to introduce sub-Saharan business persons to the African Growth and Opportunity Act (AGOA) and to demonstrate how to take advantage of its incentives. Business and government representatives from Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Cote d'Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritania, Mauritius, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe attended the AGOA programs.

Asia

Ad hoc funding arrangements have enabled CLDP to conduct a limited amount of work in Asia.

A CLDP-sponsored consultant worked with Vietnamese officials to draft Viet Nam's first commercial code and CLDP staff members have provided support on WTO and trade policymaking concepts.

In April of 2000, CLDP Chief Counsel Linda Wells participated in a two-week State Department Rule of Law program designed to share WTO-related information with the Chinese and to gauge their knowledge of the issues and their receptiveness to potential technical assistance on WTO and other commercial law matters. The 2002 and 2003 annual reports of the Congressional-Executive Commission on China included recommendations that Congress appropriate funds to establish a CLDP commercial rule of law program with China. CLDP is working with the Department

and others to endeavor to secure funding that would enable it to engage in a more comprehensive cooperative program with China.

Latin America

CLDP has been asked on a number of occasions to provide technical assistance to nations in the Western Hemisphere, particularly with respect to transparency and trade issues. Several states have indicated that they would like CLDP support as they prepare to enter into the Free Trade Agreement of the Americas and the intermediate agreements that will lead to it. CLDP is seeking the funding needed to fulfill such requests.

For additional information, please contact the CLDP office in Washington, DC.

Commercial Law Development Program, Office of General Counsel, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 USA. Telephone: 202-482-2400; facsimile at 202-482-0006; e-mail: cldp@doc.gov.



